IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1280 OF 2004

Shri Vasant Nivrutti Dhore & Ors. ..Appellants

Versus

Shri Shivaji Namdeo Dhore & Ors. ..Respondents

Mr.Nitin Jamdar for appellants.

CORAM : P.V.KAKADE, J.

DATE : 5TH JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by District Judge, Solapur dated 9.2.2004 dismissing the appeal of the appellants and confirming the judgment and order passed by Civil Judge, Junior Division, Madha dated 13.8.2001 decreeing the plaintiffs' suit for perpetual injunction.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for perpetual injunction claiming that the land belonging to them was of Gat No.444 whereas the land on the southern of their land belonged to the defendants, which was of Gat No.443 and Bandh in between two lands belonging exclusively to them including the trees standing thereon. It was also alleged that the defendants were obstructing their possession over the said trees and bandh and hence the suit came to be filed. The defendants resisted the suit on the ground that the allegation of the plaintiffs were false and the Bandh was not owned by the plaintiffs.

. The learned trial judge adjudicated the dispute on merits on the available evidence and after hearing both the parties came to the conclusion that the plaintiffs had succeeding in proving that the east-west band in between land Gat No.444 and Gat No.443 exclusively belonged to the plaintiffs. It was also held that the trees standing on the said Bandh were also belonged to the plaintiffs and as such it was also held

that since the defendants were obstructing plaintiffs' possession the plaintiffs were entitled for perpetual injunction and the suit came to be decreed. The appeal was carried to the District Court, Solapur. The learned District Judge after considering the evidence on record and hearing both the parties confirmed the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The entire dispute evidently revolves around the report and map drawn by Court Commissioner (Exh.52) which shows that the Commissioner measured both the lands and further observed that the Bandh and the trees standing thereon were part and parcel of Gat No.444 belonging to the plaintiffs. Evidently this aspect was accepted by both the courts below and matter was adjudicated accordingly. The learned counsel for the appellants submitted that the lower court erred in appreciating the evidence on record. It was further submitted that the matter should not have been disposed of on the basis of Court Commissioner's report especially when it was disputed on behalf of the

defendants on the ground that the land of Plaintiffs being Gat No.444 only was measured and defendants land was not measured by the Court Commissioner. However, this aspect is clear enough from the documents of Exh. 58 as well as Exh.45 i.e. Court Commissioner Report and map on record, which clearly shows that both the lands came to be measured and this aspect was accepted by both the courts below. Therefore, I am satisfied that both the courts below have appreciated the evidence in proper perspective and have recorded its findings accordingly. In the result the appeal stands dismissed.

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